

COURT OF APPEALS NEW FILINGS

Preliminary Appeal Statements processed
by the Court of Appeals Clerk's Office

April 18, 2014 through April 24, 2014

Each week the Clerk's Office prepares a list of recently-filed appeals, indicating short title, jurisdictional predicate, subject matter and key issues. Some of these appeals may not reach decision on the merits because of dismissal, on motion or sua sponte, or because the parties stipulate to withdrawal. Some appeals may be selected for review pursuant to the alternative procedure of Rule 500.11. For those appeals that proceed to briefing in the normal course, the briefing schedule generally will be: appellant's brief to be filed within 60 days after the appeal was taken; respondent's brief to be filed within 45 days after the due date for the filing of appellant's brief; and a reply brief, if any, to be filed within 15 days after the due date for the filing of respondent's brief.

The Court welcomes motions for amicus curiae participation from those qualified and interested in the subject matter of these newly filed appeals. Please refer to Rule 500.23 and direct any questions to the Clerk's Office.

KINSELLA v POWERGUARD SPECIALTY INSURANCE SERVICES, LLC, et al.:
1ST Dept. App. Div. order of 12/3/13; modification; leave to appeal granted by Court of Appeals, 4/8/14;
FRAUD - FRAUD IN THE INDUCEMENT - WHETHER THE APPELLATE DIVISION ERRED IN HOLDING THAT PLAINTIFF FAILED TO SUFFICIENTLY ALLEGE REASONABLE RELIANCE AND DAMAGES SEPARATE FROM HIS TERMINATION BY HIS AT-WILL EMPLOYER, AND THAT THE COMPLAINT DID NOT SHOW THAT ONE OF THE DEFENDANTS HAD ANYTHING TO DO WITH PLAINTIFF'S EMPLOYMENT WITH THE OTHER DEFENDANT;

Supreme Court, New York County, granted defendants' motion pursuant to CPLR 3211(a) (7) to dismiss the first cause of action as against defendant Powerguard Specialty Insurance Services, LLC and denied defendants' motion to dismiss the first cause of action as against Edgewood Partners Insurance Center; App. Div. modified to dismiss plaintiff's first cause of action as against Edgewood Partners Insurance Center.

POWERS, MATTER OF v ST. JOHN'S UNIVERSITY SCHOOL OF LAW:

2ND Dept. App. Div. order of 10/16/13; affirmance; leave to appeal granted by App. Div., 3/18/14;
COLLEGES AND UNIVERSITIES - ADMISSION - WHETHER LAW SCHOOL ACTED ARBITRARILY AND CAPRICIOUSLY BY RESCINDING PETITIONER'S ADMISSION AFTER HE COMPLETED MORE THAN 1 1/2 YEARS OF COURSE WORK, WHERE IT DETERMINED THAT PETITIONER'S LAW SCHOOL APPLICATION CONTAINED MISREPRESENTATIONS AND MATERIAL OMISSIONS REGARDING HIS PRIOR CRIMINAL BACKGROUND - WHETHER THE PENALTY OF RESCISSION WAS SO DISPROPORTIONATE TO THE OFFENSE AS TO CONSTITUTE AN ABUSE OF DISCRETION AS A MATTER OF LAW - PETITIONER'S ENTITLEMENT TO INVOKE GRIEVANCE PROCEDURE IN LAW SCHOOL'S STUDENT HANDBOOK; Supreme Court, Queens County, denied a CPLR article 78 petition to review a determination of St. John's University School of Law, which rescinded petitioner's admission and, in effect, denied his application for admission nunc pro tunc, and dismissed the proceeding; App. Div. affirmed.

SAINT v SYRACUSE SUPPLY COMPANY:

4TH Dept. App. Div. order of 10/4/13; reversal; leave to appeal granted by Court of Appeals, 4/8/14;
LABOR - SAFE PLACE TO WORK - WHETHER PLAINTIFF WAS "ALTERING" A STRUCTURE WITHIN THE MEANING OF LABOR LAW § 240(1) AND WAS ENGAGED IN "CONSTRUCTION WORK" WITHIN THE MEANING OF LABOR LAW § 241(6) WHEN HE WAS APPLYING A NEW ADVERTISEMENT TO THE FACE OF A BILLBOARD; WHETHER THE APPELLATE DIVISION ERRED IN DISMISSING PLAINTIFF'S LABOR LAW § 240(2) CLAIM REGARDING SCAFFOLDING MORE THAN 20 FEET FROM THE GROUND;
Supreme Court, Erie County, among other things, denied defendant's motion for summary judgment dismissing the amended complaint; App. Div. reversed, granted defendant's motion for summary judgment dismissing the amended complaint, and dismissed the amended complaint.

WOODSIDE MANOR NURSING HOME, MATTER OF v SHAH:

4TH Dept. App. Div. order of 1/3/14; modification; leave to appeal granted by Court of Appeals, 4/8/14;

HEALTH - MEDICAID REIMBURSEMENT RATES - WHETHER (1) PUBLIC HEALTH LAW § 2808(17)(b), WHICH ESTABLISHED A MORATORIUM AND CAP ON THE DEPARTMENT OF HEALTH'S REVISION OF MEDICAID RATE APPEALS BY RESIDENTIAL HEALTH CARE FACILITIES, APPLIES RETROACTIVELY TO RATE APPEALS FILED PRIOR TO ITS ENACTMENT; (2) RETROACTIVE APPLICATION UNCONSTITUTIONALLY DEPRIVES PETITIONERS OF VESTED PROPERTY RIGHTS; AND (3) PETITIONERS ARE ENTITLED UNDER STATE AND FEDERAL LAWS AND REGULATIONS TO A WRIT OF MANDAMUS COMPELLING DETERMINATION OF THEIR RATE APPEALS;

Supreme Court, Monroe County, granted a CPLR article 78 petition in the nature of mandamus to compel respondents to determine certain medicaid rate appeals and remitted the matter to the Department of Health for that purpose; App. Div. modified the judgment by denying the petition in its entirety and dismissing the proceeding.